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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,238	10/26/2001	E. Stuart Savage	TETR-050	8348

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EXAMINER

CINTINS, IVARS C

ART UNIT PAPER NUMBER

1724

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,238

Applicant(s)

SAVAGE ET AL.

Examiner

Ivars C. Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004 and 08 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 28-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-27 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. It appears essential that the lid for the underdrain block be non-porous (see page 2, lines 18-19 and 30 of the specification). Since claims 19-27 fail to recite this critical limitation, these claims are not enabled by the disclosure. *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Applicant is advised that an amendment to claims 19, 25 and 27 which recites that the lid is non-porous would overcome this rejection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-27 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 19-27 fail to recite the apparently critical limitation that the underdrain lid is non-porous; and therefore, these claims fail to particularly point out and distinctly claim the subject matter which Applicant regards as the invention (see page 6, third paragraph, lines 3-4, of the response filed July 30, 2004). Applicant is advised that an amendment to claims 19, 25 and 27 which recites that the lid is non-porous would overcome this portion of the rejection. Also, the term "the lid" (claim 25, line 5) still lacks antecedent basis in the claim, and is therefore indefinite. Furthermore, the term "a lid" (claim 25, line 12) is now somewhat indefinite, since it is not clear whether this lid is intended to be the same lid as that recited in line 5 of this claim, or a different lid. Claim 26 depends from claim 25, and therefore

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suffers similarly. Applicant is advised that an amendment to claim 25 which positively recites that the underdrain block includes a lid (e.g. somewhere in lines 1-5 of the claim), and then changes "a lid" back to "the lid" in line 12 of this claim would overcome this portion of the rejection.


Claims 19-27 would be allowed if rewritten or amended to overcome the above rejections under 35 U.S.C. § 112 because it is agreed that it would not have been obvious to provide the underdrain block of Gresh et al. with the lid of Brown et al., since the lid of this secondary reference is intended to distribute a liquid, and no liquid can pass through the fill material (i.e. concrete 36) of the primary reference underdrain block.

Also, Applicant should cancel non-elected claims 1-18 and 28-36.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (571) 272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at (571) 272-1166.

The centralized facsimile number for the USPTO is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
November 28, 2004